IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 4 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

SABARKANTHA JILLA KHARID VECHAN SANGH LTD

Appearance:

MR BB NAYAK MANISH R BHATT for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 14/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this Reference at the instance of the revenue, the following question has been referred for the opinion of this Court in respect of A.Y.1970-71.

> "Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal has been right in law in holding that reopening of assessment u/s.147(b) of the I.T.Act,1961 was not justified ?"

2 The original assessment was made by Income-tax Officer on 21/3/1973. Thereafter, on scrutiny of records the I.T.O. issued notice under section 148 of the Act with a view to withdraw exemption granted u/s.80P(2)(iv) of the Act on the ground that on scrutiny of records sales to members included sales of iron and cement which were not intended for agricultural purpose. After hearing the assessee, the I.T.O. revised the assessment and withdrew the exemption granted earlier.

3 In appeal the assessee challenged the reopening of the assessment under section 147(b) of the Act in view of the decision of the Apex Court in Indian and Eastern Newspaper Society, 119 ITR 996. The C.I.T.(Appeals) allowed the appeal and cancelled the assessment on the ground of jurisdiction and therefore did not consider it necessary to deal with other grounds raised by the assessee.

4 In the appeal filed by the revenue, the Tribunal held that the audit had tried to reinterpret the provision of Section 80P of the Act and therefore issuance of notice u/s.147(b) on the basis of the interpretation placed by the audit, on which the I.T.O. relied for notice u/s.147(b), did not constitute information for the purpose of Sec.147(b) of the Act.

5 Mr.B.B.Nayak, learned Counsel for the Revenue, contended that since the issuance of notice by the I.T.O. was on the ground that the sale in question was not for agricultural purpose, the Tribunal was not justified in holding in favour of the assessee and against the revenue. The audit note is not on the record of the proceedings but in view of the specific observation in the Tribunal's order that the interpretation placed by the audit on the provisions of Sec.80P cannot constitute information for the purpose of Sec.147(b) of the Act, we are not inclined to take a different view and therefore,

we answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

6 The Reference accordingly stands disposed of with no order as to costs.

Sd/- Sd/-
(M.S.Shah,J) (D.A.Mehta,J)

m.m.bhatt